



HIGH COURT OF AUSTRALIA

10 March 2021

MARION ANTOINETTE WIGMANS v AMP LIMITED & ORS
[2021] HCA 7

Today the High Court dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales concerning the manner in which a court should respond to competing applications to stay one or more open class representative proceedings commenced under Pt 10 of the *Civil Procedure Act 2005* (NSW) in relation to the same controversy.

Following evidence given by executives of AMP Limited at the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry on 16 and 17 April 2018, five open class representative actions were brought against AMP Limited. There is considerable overlap between the claims made in the proceedings, although they are not identical. The representative plaintiff in four of the proceedings filed a notice of motion in the Supreme Court of New South Wales seeking orders that each other proceeding be permanently stayed. An application was made (and ultimately granted) for the remaining proceeding to be consolidated with one of the other four proceedings, filed by Komlotex Pty Ltd ("consolidated Komlotex proceedings").

The primary judge, adopting a "multifactorial approach", found that the consolidated Komlotex proceedings should proceed and the other proceedings should be stayed. The primary judge gave most weight to a comparison of competing funding proposals, costs estimates and net hypothetical return to members, and found that Komlotex Pty Ltd's funding model was likely to provide the best return for group members. Ms Wigmans, the representative plaintiff in the proceeding filed first in time, appealed on grounds that the consolidated Komlotex proceedings were an abuse of process.

A majority of the High Court found that there can be no "one size fits all" approach and, where the defendant's interests are not differentially affected, the court is to determine which proceeding going ahead would be in the best interests of group members. The Supreme Court's power to grant a stay of competing representative proceedings is not confined by a rule or presumption that the proceeding filed first in time is to be preferred. Further, while litigation funding arrangements are not a mandatory consideration relevant to the exercise of the stay power, they are not irrelevant. The primary judge assumed there was no basis for distinguishing between the legal teams and litigation funders in each matter and tested the likelihood of achieving particular results by applying the common assumptions to each case. Ms Wigmans conducted her case consistently with those assumptions, and there was no error in the primary judge's approach.

The primary judge's approach was not the only manner in which a court might determine which proceeding going ahead would be in the best interests of group members. The appropriate approach will invariably depend on the nature of the case in hand.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.